

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

STATE OF ARKANSAS, *ex rel.*
TIM GRIFFIN, ATTORNEY GENERAL

PLAINTIFF

v. CASE NO. 60CV-23-_____

H2O POOLS AND SUPPLIES, LLC; and
VICTORIA HARVEY, IN HER PERSONAL
CAPACITY

DEFENDANTS

COMPLAINT

The State of Arkansas, *ex rel.* Tim Griffin, Attorney General (“the State”), for its Complaint against H2O Pools and Supplies, LLC (“Defendant Company”) and Victoria Harvey (“Defendant J. Harvey”) (jointly, “Defendants”) states:

I. INTRODUCTION

1. This is a consumer protection action brought to redress and restrain violations of the Arkansas Deceptive Trade Practices Act (“ADTPA”), Ark. Code Ann. § 4-88-101 *et seq.*

2. At all times relevant to this complaint, H2O Pools and Supplies, LLC operated a business in Arkansas that offered to sell and install pools and pool liners at consumers' residential properties. The down payment for the installation of a pool included the purchase of the “pool kit,” “all supplies,” and “material.” However, after accepting consumers’ money for the construction of pools or the replacement of pool liners or other repairs, Defendants failed to perform their contracted services or provide the purchased goods. When consumers asked for proof that Defendants had ordered the “pool kits” “supplies” or “materials”, Defendants refused to provide receipts for use of the consumers’ down payments. Consumers have paid over \$500,000 to

Defendants to install and refurbish pools but Defendants have not completed the projects nor returned consumers' money.

3. When consumers filed complaints, Defendants either ignored them, failed to provide a solution, or gave the consumer a small amount of money in an apparent attempt to pacify the consumer, after which Defendants stopped responding to communications from consumers.

4. Some consumers who wrote social media posts reviewing Defendant Company's non-performance of its promised work were harassed by Defendant Harvey.

5. Defendants repeatedly failed to properly address complaints filed with the Attorney General, the Contractors' Licensing Board, and the Better Business Bureau.

6. Based on the number of complaints and the increasing frequency with which they are being filed with the Attorney General, the State expects significantly more consumers who have been harmed by Defendants to come forward.

7. Defendant Company's registration with the Secretary of State's Office has been revoked.

8. Defendants' unfair, deceptive, and unconscionable business practices have cost Arkansas consumers hundreds of thousands of dollars.

II. PARTIES

9. Plaintiff is the State of Arkansas, *ex rel.* Tim Griffin, Attorney General. Pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113, the State may seek civil enforcement of the ADTPA. The Attorney General's Consumer Protection Division shall represent and protect the state, its subdivisions, the legitimate business community, and the general public as consumers. Ark. Code Ann. § 4-88-105(c).

10. Defendant H2O Pools and Supplies, LLC is a limited liability company formerly registered with the Arkansas Secretary of State. Defendant Company's Arkansas address is listed with the Secretary of State as 9 Meadows Creek Drive, Conway, Arkansas. This is the same address as its registered agent, Victoria Harvey, a managing member of Defendant Company.

11. Defendant Victoria Harvey, an officer or director of H2O Pools and Supplies, LLC, is a resident of Arkansas whose address is 9 Meadows Creek Drive, Conway, Arkansas. At all times relevant to this Complaint Defendant Harvey was a partner, officer, or director of Defendant Company who directly or indirectly controlled Defendant Company and its employees or he facilitated, assisted, acted as an intermediary, or aided Defendant Company in violation of the Arkansas Deceptive Trade Practices Act. Ark. Code Ann. § 4-88-113(d)(1).

III. JURISDICTION

12. This Court has jurisdiction over this matter and the common law of the State of Arkansas. Ark. Code Ann. § 4-88-104.

13. Defendant Company is a pool sales and installation company that has transacted business in the State of Arkansas within the applicable statute of limitations. This Court has personal jurisdiction over Defendants pursuant to Ark. Code Ann. § 16-4-101. Defendants have availed themselves of the benefit of transacting business in Arkansas by marketing, offering for sale, installing, repairing, and servicing pools within the state.

14. Venue is proper pursuant to Ark. Code Ann. §§ 4-88-104, 4-88-112, and the common law of the State of Arkansas.

IV. FACTUAL ALLEGATIONS

15. The purchase of a residential pool and its installation, maintenance, refurbishment, and repair is a significant financial undertaking for a homeowner, costing thousands of dollars.

16. Defendants marketed and sold pools, pool installation services, pool liners, pool liner installation services, and other pool supplies and services.

17. Since at least April 2021, the Attorney General's Office has received consumer complaints regarding Defendants. Consumers allege that after they have contracted with Defendants for its advertised pool installations and pool liner installations, Defendants failed to deliver the promised goods and services. In some instances, consumers were left with a hole in their yard or the empty shell of a pool without a liner or the equipment necessary for the pool to function.

18. As of March 1, 2023, the Attorney General's Office had received twenty-six (26) consumer complaints and the Better Business Bureau had received five (5) complaints about Defendants and their business practices from Arkansas consumers, alleging the same types of actions and failures to act. Defendants failed to begin or complete the construction of dozens of pool installations, as well as failing to perform even pre-construction services. In addition, the Contractor's Licensing Board received seven (7) complaints.

19. Even though Defendants had received complaints from the Arkansas Contractor's Licensing Board, the Better Business Bureau, and Attorney General's Office for undelivered goods and services, Defendants continued to solicit consumers.

20. At least two consumers are over the age of sixty and are considered "elder persons" under the ADTPA. Upon information and belief, other persons who have not yet lodged complaints with the Arkansas Attorney General may have been victims of the Defendants'

activities described herein, and additional violations, which are not presently known to the State, may be discovered and added to this Complaint.

V. VIOLATIONS OF LAW

21. The ADTPA sets forth the State's statutory program prohibiting deceptive and unconscionable trade practices. Ark. Code Ann. §§ 4-88-101 *et seq.*

22. At all times relevant herein, Defendants were "persons" who engaged in the practices alleged herein which constitute the sale of "goods," including but not limited to pools and pool liners and hardware required for their installation, or "services," including installation and all other services listed in the Sales Agreement. Ark. Code Ann. § 4-88-102(4), (5), and (7).

23. Defendants' marketing and sale of pools and pool installation services and pool repair services constitute business, commerce, or trade in Arkansas.

24. Defendants offered for sale and provided "services" primarily for personal, family, or household purposes. Ark. Code Ann. § 4-88-102(7).

COUNT I

25. Plaintiff repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

26. The ADTPA prohibits a person from "knowingly mak[ing] a false representation as to the characteristics . . . uses, benefits, alterations, source . . . approval, or certification of goods or services [....]." Ark. Code Ann. § 4-88-107(a)(1).

27. Defendants violated the ADTPA when they knowingly false representations:

- a. That they would install functional and complete pools and pool liners; or
- b. That they would arrange for all necessary work to complete the pool installation services such as excavation, electrical, and plumbing work; or

- c. That they would obtain all necessary building permits required by local municipal or county governments; or
- d. That consumers' down payments would be used to pay for each consumer's ordered pool, pool liner, or pool service.

COUNT II

28. Plaintiff repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

29. It is an unlawful, deceptive, and unconscionable trade practice to advertise goods or services with the intent not to sell them as advertised. Ark. Code Ann. § 4-88-107(a)(3).

30. Defendants advertised their goods and services to consumers with the intent not to provide and install the pools, pool liners, and pool installation and repairs goods and services as advertised, but to collect the proceeds of the payments collected from consumers or third-party lenders.

COUNT III

31. Plaintiff repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

32. The act, use, or employment by a person of any deception, fraud, or false pretense when utilized in connection with the sale or advertisement of any goods or services is unlawful. Ark. Code Ann. § 4-88-108(a)(1).

33. Defendants acted, used, or employed deception, fraud, or false pretenses when they solicited pool sales and pool installation agreements knowing that they would not be able to provide the goods and services sold.

COUNT IV

34. Plaintiff repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

35. The ADTPA prohibits the use of “concealment, suppression, or omission of any material fact with the intent that others rely upon the concealment, suppression or omission” while advertising or selling any goods or services. Ark. Code Ann. § 4-88-108(a)(2).

36. Defendants concealed and suppressed material facts such as:

- a. Defendants’ capacity to install pools and pool liners in the stated timeframe;
- b. Defendants’ use of consumers’ payments for projects or business expenses unrelated to their contracts for services.

COUNT V

37. Plaintiff repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

38. The ADTPA prohibits a person from engaging in an “unconscionable, false, or deceptive act or practice in business, commerce, or trade.” Ark. Code Ann. § 4-88-107(a)(10). An act is unconscionable “if it affronts the sense of justice, decency, and reasonableness.”¹

39. Defendants engaged in unconscionable, false, and deceptive acts or practices when they:

- a. Required consumers to pay upfront costs and fees to start construction but failed to complete projects;
- b. Induced customers to obtain financing for projects they never started or finished;
- c. Refused to offer or pay refunds when they failed to complete projects.

¹ See *Gulfeo of Louisiana, Inc. v. Brantley*, 2013 Ark. 367, 430 S.W.3d 7 (2013).

COUNT VI

40. Plaintiff repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

41. Defendants' unlawful, deceptive, and unconscionable business practices and conduct targeted Elder Persons or Persons with Disabilities causing:

- a. Mental and emotional anguish,
- b. Loss of or encumbrance upon a primary residence of the elder person or person with a disability, in violation of section 4-88-201 *et seq.*

VI. COUNT VII

42. Plaintiff repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

43. The deceptive and unconscionable trade practices made unlawful and prohibited by the ADTPA include "knowingly facilitating, assisting, intermediating, or in any way aiding the operation or continuance of an act or practice" in violation of the ADTPA. Ark. Code Ann. § 4-88-107(a)(12).

44. Defendant Victoria Harvey knowingly facilitated, assisted, intermediated, or aided the operation and continuance of an act or practice

VII. PRAYER FOR RELIEF

45. The Attorney General brings this civil action to prevent persons from engaging in the use or employment of prohibited practices. Ark. Code Ann. § 4-88-113(a)(1).

46. Likewise, the Attorney General brings this civil action to seeking to restore to any purchaser who has suffered any ascertainable loss by reason of the use or employment of the prohibited practices any moneys or real or personal property which may have been acquired by

means of any practices declared to be unlawful, together with other damages sustained. Ark. Code Ann. § 4-88-113(a)(2)(A).

47. The Attorney General seeks an injunction prohibiting Defendants from engaging in any deceptive or unlawful practice. Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1).

48. The Attorney General seeks civil penalties against Defendants who violated the provisions of the ADTPA of up to \$10,000.00 per violation. Ark. Code Ann. § 4-88-113(a)(3).

49. Persons who violated the ADTPA against an Elder Person or Person with a Disability may be assessed an additional civil penalty not to exceed ten thousand dollars (\$10,000) for each violation. Ark. Code Ann. § 4-88-202.

50. In addition, any person who violates the provisions of the ADTPA shall be liable to the Office of the Attorney General for all costs and fees, including but not limited to, expert witness fees and attorney's fees, incurred by the Office of the Attorney General in the prosecution of such actions. Ark. Code Ann. § 4-88-113.

51. Defendants are jointly and severally liable for any penalties assessed and monetary judgments awarded. Ark. Code Ann. § 4-88-113(d)(1).

52. The State demands a trial by jury.

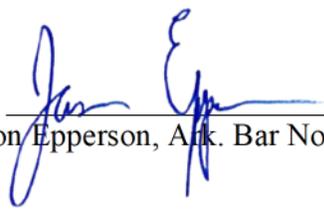
WHEREFORE, the above premises considered, the State of Arkansas, *ex rel.* Tim Griffin, Attorney General, respectfully requests that this Court:

- a. Issue such orders, pursuant to Ark. Code Ann. §§ 4-88-104 and 4-88-113(a)(1), as may be necessary to prevent the use or employment by the Defendants of the practices described herein which are violations of the ADTPA;
- b. Issue an injunction against Defendants from operating any pool-related businesses in Arkansas, including but not limited to sales, installations, repair, or consulting;

- c. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(a)(2)(A), requiring Defendants to pay restitution to those Arkansas consumers affected by the activities outlined herein; in addition, or, in the alternative, enter an order requiring Defendants to remit to affected consumers all sums obtained from Arkansas consumers by methods prohibited by Arkansas law;
- d. Impose civil penalties pursuant to Ark. Code Ann. § 4-88-113(b), to be paid to the State by the Defendants in the amount of \$10,000.00 per each violation of the ADTPA proved at a trial of this matter;
- e. Impose additional penalties pursuant to Ark. Code Ann. § 4-88-201 to be paid to the Treasurer of the State and placed into the Elder Person and Person with a Disability Victims Fund, a special fund created in the State Treasury and administered by the Attorney General for the investigation and prosecution of deceptive acts against an elder person or a person with a disability and for consumer initiatives.
- f. Issue an order, pursuant to Ark. Code Ann. § 4-88-113(e), requiring Defendants to pay the State's costs in this investigation and litigation, including, but not limited to, attorneys' fees and costs; and
- g. For all other just and proper relief to which the State may be entitled.

Respectfully submitted,

TIM GRIFFIN
ATTORNEY GENERAL

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